IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

KATHLEEN M. VELEK; PLAINTIFFS
TIMOTHY P. COTTON;
CAROLYN J. MCEWEN; and
PARTIES SIMILARLY SITUATED

vs. No. 4:00CV00929 SMR

STATE OF ARKANSAS; DEFENDANTS
CITY OF LITTLE ROCK, ARKANSAS;
JUDGE VICTOR A. FLEMING, Little Rock Municipal Judge;
CITY OF STUTTGART, ARKANSAS; and
JUDGE J.W. GREEN, Stuttgart Municipal Judge

ORDER

Presently before the Court is Plaintiffs' Motion to Vacate Judgment and Reinstate Lawsuit (Doc. No. 37). For the following reasons, the motion is denied.

On March 7, 2001, the Court entered the Order and Judgment from which Plaintiffs seek relief pursuant to Rule 60 of the Federal Rules of Civil Procedure. The Court reasoned that the doctrine of abstention under Younger v. Harris, 401 U.S. 37 (1971) required dismissal of this case. Plaintiff Timothy P. Cotton admits that Younger abstention does apply in his case because his criminal prosecution was pending when the present Complaint was filed, but argues that one of the three exceptions to Younger abstention applies in his case. Plaintiffs Kathleen M. Velek and Carolyn J. McEwen argue that Younger abstention does not apply in their case because their state criminal prosecutions are no longer pending. The Court will explain the various reasons why dismissal is appropriate in this case.

I. Facts

Plaintiff Timothy P. Cotton ("Mr. Cotton") is currently facing criminal prosecution in Arkansas municipal court. Plaintiff Kathleen M. Velek ("Ms. Velek") was adjudicated in Little Rock Municipal Court on December 21, 2000. Plaintiff Carolyn J. McEwen ("Ms. McEwen") was acquitted in 1998 after appealing her municipal court conviction. Plaintiffs allege that the two-tier system applied to municipal misdemeanants under the criminal law of Arkansas is unconstitutional, in violation of their right to a jury trial. Plaintiffs seeks equitable relief from this Court, enjoining further prosecution under the Arkansas two-tier system and declaring the system unconstitutional.

II. Mr. Cotton

Mr. Cotton admits that his state criminal prosecution was pending when the Complaint was filed in this case. Therefore, Younger abstention applies. See Steffel v. Thompson, 415 U.S. 452, 462 (1974) (holding that declaratory relief is available and not precluded by Younger abstention when no state criminal proceeding is pending at the time the federal complaint is filed).

However, Mr. Cotton argues that his case falls within one or more of the exceptions to the Younger abstention doctrine. As stated in the Order of March 7, 2001, the Court disagrees:

> There are three extraordinary exceptions to the Younger abstention doctrine:
> (1) where irreparable injury is both great and immediate,
> (2) where the state law is flagrantly and patently violative of express constitutional prohibitions, or
> (3) where there is a showing of bad faith, harassment, or any other unusual circumstances that would call for equitable relief.

See Younger, 401 U.S. at 46, 54-55.

> None of the extraordinary exceptions apply in the present case. This Court, in the Order of February 6, 2001 (Doc. No. 13) previously found that no irreparable injury exists in this case. Moreover, the Court addressed why the Plaintiffs are not likely to succeed, explaining why the two-tier Arkansas system is not "flagrantly or patently violative of express constitutional prohibitions," based upon United States Supreme Court case law and Arkansas case law. See Younger, 401 U.S. at 46, 54-55; State v. Roberts, 321 Ark. 31, 900 S.W.2d 175 (1995). Finally, Plaintiffs have made no showing of "bad faith, harassment, or any other unusual circumstance that would call for equitable relief." See Younger, 401 U.S. at 46, 54-55.

Order of March 7, 2001 (Doc. No. 35). Thus, no exception to Younger abstention applies in Mr. Cotton's case and his claim is properly dismissed.

II. Ms. Velek and Ms. McEwen

Ms. Velek and Ms. McEwen argue that the Court erred in dismissing their claims because Younger abstention is not applicable to them since their criminal state proceedings are no longer applicable. Assuming arguendo that Plaintiffs are correct,[1] the Court will illustrate why dismissal of this case is appropriate under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 12(b)(6).[2]

A proper basis for a motion to dismiss is "failure to state a claim upon which relief can be

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[1] The Court notes that Plaintiffs currently have a pending state civil action in the Circuit Court of Pulaski County, alleging the same claims as the present case, which was filed on March 1, 2001. Defendants argue that Younger abstension still applies to all Plaintiffs because of the pending state civil proceeding. See Yamaha Motor Corp., U.S.A. v. Stroud, 179 F.3d 598 (8th Cir. 1999). Because Plaintiffs are not seeking injunctive relief from the pending state civil proceeding, the Court declines to address whether or not Younger abstension applies.

[2] The Court does not reach the additional reasons why dismissal would be appropriate is this case, such as Defendant State of Arkansas is protected by sovereign immunity, Defendants Fleming and Green are protected by absolute immunity, and Plaintiffs cannot establish municipal liability as to the city Defendants.

granted." See Fed. R. Civ. P. 12(b)(6). A complaint must be dismissed under Rule 12(b)(6) only if "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Springdale Educ. Ass'n v Springdale Sch. Dist., 133 F.3d 649, 651 (8th Cir. 1998). A district court should grant a motion to dismiss "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). When analyzing a motion to dismiss under Rule 12(b)(6), a district court must accept the factual allegations contained in the complaint as true. See Springdale Educ. Ass'n, 133 F.3d at 651. The district court must construe the facts in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of the plaintiff. See id.; Coleman v. Watt, 40 F.3d 255, 258 (8th Cir. 1994). A complaint should not be dismissed "merely because it does not state with precision all elements that give rise to a legal basis for recovery." See Schmedding v. Tnemec Co., Inc., 187 F.3d 862, 864 (8th Cir. 1999) (citing Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)). "[A] dismissal under Rule 12(b)(6) should only be granted in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Id. "At a minimum, however, a complaint must contain facts sufficient to state a claim as a matter of law and must not be merely conclusory in its allegations." See Springdale Educ. Ass'n, 133 F.3d at 651.

In order for Plaintiffs to state a prima facie case under § 1983, they first must allege they have been deprived a right protected by the United States Constitutional or federal statutory law. See 42 U.S.C. § 1983. If Plaintiffs cannot allege a valid constitutional injury, the case must be dismissed. Here, Plaintiffs allege the Arkansas two-tier system deprives them of their right to a

jury trial secured by the Sixth Amendment, and is therefore unconstitutional per se. The Court disagrees.

The two-tier system of providing a trial by jury for misdemeanants has been upheld by the United States Supreme Court and the Arkansas Supreme Court and both courts have rejected challenges based upon the right to a jury trial. See Webb, 323 Ark. at 88, 913 S.W.2d at 263-64 (citing Ludwig v. Massachusetts, 427 U.S. 618 (1976); State v. Roberts, 321 Ark. 31, 900 S.W.2d 175 (1995)); see also Velek v. State of Arkansas, et al., __ F.R.D. __, No. 4:00CV00929 SMR, 2001 WL 128448 (E.D. Ark. Feb. 6, 2001) (Order of February 6, 2001 (Doc. No. 13) (denying Plaintiffs' motions for TRO and preliminary injunction in the present case, and examined Plaintiffs' likelihood of success on the merits). Prior United States Supreme Court and Arkansas Supreme Court case law clearly holds that such a two-tier system for securing a misdemeanant's right to a jury trial is constitutional. See Webb, 323 Ark. at 88, 913 S.W.2d at 263-264. The Court finds no reason to disagree with the United States Supreme Court and the Arkansas Supreme Court.

Thus, Plaintiffs have failed to state a constitutional injury. Therefore, they have failed to sufficiently allege a valid claim under § 1983. For these reasons, dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate.

III. Conclusion

For the reasons stated, Plaintiffs' Motion to Vacate Judgment and Reinstate Lawsuit is denied.

IT IS SO ORDERED this ____ day of March, 2001.

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UNITED STATES DISTRICT JUDGE